

Restrictive Covenants for Storm Water Facilities

This Covenant, executed this _____ day of _____, 20____.

WITNESSETH

WHEREAS, the undersigned (hereinafter "Property Owner") is in the process of platting real property to be known as _____ Addition (hereinafter the "Property"), an addition to Wichita, in Sedgwick County, Kansas; and

WHEREAS, the City of Wichita (hereinafter the "City") is required to protect water quality to the maximum extent practicable under its Municipal Separate Storm Sewer System permit; and

WHEREAS, Chapter 16.YY.090 of the Wichita Storm Water Management Ordinance requires Property Owners to enter into permanent maintenance agreements for storm water facilities and credit areas before the Property is developed; and

WHEREAS, Chapter 16.YY.110 of the Wichita Storm Water Management Ordinance requires Property Owners to inspect and Properly maintain all storm water facilities and credit areas to maintain their full function; and

WHEREAS, the storm water facilities and credit areas are located on the Property as shown on **Attachment A**, "Storm Water Facility and Credit Area Map" or "Storm Water As-Built";

NOW THEREFORE, the undersigned does hereby subject the Property, an addition to Wichita, in Sedgwick County, Kansas, to have the following covenants and restrictions (hereinafter the "Agreement"):

1.0 Reserve Requirement

1.1 All storm water facilities and credit areas shall be placed in a reserve shown on the Final Plat for the Property.

2.0 Home or Business Association Requirements

2.1 At such time as the Property shall be developed by erection of improvements thereon, the undersigned agrees to cause an association (hereinafter the "Association") to be formed as a Kansas corporation to provide for the care, maintenance and upkeep of the storm water facilities found on Attachment A.

2.2 Prior to the sale of any lot in the subdivision, the Property Owner shall cause to be recorded with the Register of Deeds for Sedgwick County, Kansas a Homes or Business Association Declaration (hereinafter the

“Declaration”) covering all of the platted lots within the subdivision that includes this Agreement by reference.

- 2.3 The Declaration shall require that the Association levy assessments against the lots within the subdivision sufficient to pay for maintenance and future replacement of the storm water facilities and credit areas and for any costs incurred by reason of this Agreement. The Association shall have an enforceable lien on any lot in the subdivision in the event that any lot owner fails to pay the storm water assessment. All purchasers of lots shall be given an outline summary of the maintenance obligations and costs per this Agreement.
- 2.4 The Declaration shall contain a provision requiring the written consent of the City for the termination of the Association in its entirety or to any amendment, modification or termination of any provision thereto regarding storm water facilities and credit areas.
- 2.5 The Declaration shall name the City as a third-party beneficiary of all provisions therein relating to the storm water treatment facilities and credit areas and will give the City the right to enforce all restrictions, obligations and other provisions regarding the storm water facilities and credit areas.
- 2.6 The reserves located in said Addition will be conveyed to the Association at such time as the project is sold to or occupied by owners or tenants other than the undersigned. Until said reserves are so conveyed, the ownership and maintenance of the reserves shall be by the undersigned.

3.0 Maintenance Requirements

- 3.1 The Property Owner will construct and maintain the storm water facilities and credit areas in strict accord with the plans, specifications, calculations, and conditions required by the City Public Works Department.
- 3.2 Maintenance of all storm water facilities and credit areas will be performed by the owner of the reserves according to the minimum maintenance frequencies and measures provided on **Attachment B**, “Inspection and Maintenance Requirements”.
- 3.3 The Property Owner shall not use or attempt to use the reserves containing storm water facilities or credit areas in any manner which would interfere with the continuous and perpetual maintenance and use thereof and, in particular, shall not build thereon or thereover any structure which may interference or cause to interfere with the maintenance thereof.
- 3.4 It is understood by the Property Owner and City that actual maintenance costs and future replacement costs are variable, however for budgetary purposes, the project designer is required to estimate future maintenance and replacement costs so that the Property Owner may better plan future required expenditures. Based on the project designer’s estimates,

Attachment C is a tabulation of the anticipated maintenance and replacement costs.

4.0 Right of Entry

- 4.1** The Property Owner does herein grant the City, its agents and contractors, reasonable access to the property necessary for the purpose of inspecting, sampling, reconstructing, maintaining or repairing each of the storm water facilities and credit areas in accordance with Section 5 of this agreement, and shall execute any documents deemed necessary by the City, if any, thereto.
- 4.2** The Property Owner shall, upon written request of the City, remove any temporary or permanent obstruction that prevents reasonable access to any storm water treatment facility or credit area.
- 4.3** For purposes of this agreement, “reasonable access” means an access path from the public street right of way to the stormwater facility or credit area a minimum 20 feet in width, and a maximum ground slope of 10% that is accessible by construction equipment or vehicles that may be needed to inspect, sample, reconstruct, maintain, repair, replace or construct the storm water facility or credit area. Such access path shall remain free of obstructions that would hinder access such as retaining walls, buildings, above ground utility structures, walls, fences, trees, landscape monuments, permanent water bodies, and other items that would prevent access to the storm water facility or credit area.
- 4.4** Storm water facility and credit area access easements have been granted on the Final Plat of _____ and are shown on Attachment A. The actual access path shall be provided whether or not one is shown on the Final Plat.
- 4.5** The rights granted herein shall not be construed to interfere with or restrict the Property Owner, his/her/its heirs, executors, administrators, successors and assigns from the use of the premises with respect to the construction and maintenance of property improvements along and over the premises herein described so long as the same are so constructed as not to impair the rights of access to a storm water facility or credit area granted herein.

5.0 Maintenance Enforcement by the City

- 5.1** If, after reasonable notice to the Property Owner, the Property Owner shall fail to maintain all storm water facilities and credit areas as set forth herein and other applicable legal requirements, the City may perform all necessary repair or maintenance work, and the City may assess the Property Owner and the Property, for the cost of the work and any applicable penalties. For the purposes of this document, “reasonable notice” shall consist of 30 days prior written notice sent to the Property Owner, unless there are exigent circumstances requiring either immediate or shorter response than said 30 days would provide, in which case the

notice provided shall be whatever is reasonable under those circumstances.

- 5.2** The City may record an Affidavit of Nonpayment of Maintenance Charges in the Register of Deeds Office for Sedgwick County, Kansas, stating (a) the legal description of the property upon which the lien is claimed, (b) the name(s) of the Property Owner as last known to the City, and (c) the amount of the Maintenance Charge which is unpaid. The lien shall be created at the time of the filing and recording of the affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the subject property, whether arising from or imposed by judgment or decree by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes and other public charges as are by applicable law made superior.
- 5.3** It is understood by Property Owner that the City of Wichita is under no past, present, or future obligation to expend public funds or take any other action whatsoever to maintain or improve any storm water facility or credit area. The City or Property Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this declaration. The City or the Property Owner shall have the right to include in their claim for relief a reasonable sum to reimburse them for their attorneys' fees and any other expenses reasonably incurred in enforcing their rights hereunder. Failure by the City or by the Property Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Neither shall failure by the City to enforce the provisions hereof be deemed a waiver of any provision hereof as to any other owner.

6.0 Indemnification

- 6.1** The Property Owner shall indemnify and hold the City harmless from any and all damage, loss, claims or liability of any kind whatsoever arising from the installation, maintenance, repair, operation or use of any storm water facility or credit area including, but not limited to, any loss occasioned by reason of damage or injury to persons or property which may occur. In addition, the Property Owner shall pay all costs and expenses involved in defending all actions arising there from.

These covenants and agreements as set forth herein, fully executed, shall be filed by the Register of Deeds for Sedgwick County, Kansas, and the filing of the same shall constitute constructive notice to all heirs, successors, transferees, and assigns of the Property Owner of these covenants and agreements running with the land and notice of all stipulations made thereto.

This document may not be amended or modified in any way without the prior written approval of the authorized officials of the City of Wichita, Kansas, and that approval must be indicated on the face of any subsequently recorded document amending or modifying this document.

Notwithstanding other provisions of this document placing rights, duties, obligations and responsibilities on the Property Owner, as that term is defined herein, those rights, duties, obligations and responsibilities shall only be exercised or enforced in the following manner: when the property is owned by the current owner, or by a succeeding developer, those requirements shall only be exercised or enforced by or against those legal entities. When an approved Association takes over ownership of the Property, those rights, duties, obligations and responsibilities shall succeed to that Association as provided in the legal documents creating the same. It is not the intent of this document to create or impose any rights, duties, obligations and responsibilities directly on subsequent owners of individual lots within the subdivision, unless or until the Association is unwilling or unable to exercise or comply with and enforce the terms of this document and fully meet all the duties, obligations and responsibilities set forth herein, including, without being limited to, payment of any costs imposed by this document by all means specified in the documents creating the Association, including assessment of individual lot owners when necessary. If that Association shall cease to exist or be in default of its duties, obligations or responsibilities as set forth herein, the City shall have the option of directly enforcing them against individual owners of lots within the subdivision.

The City, at Property Owner's cost, shall cause this agreement to be filed with the Register of Deeds for Sedgwick County, Kansas. Each party hereto shall receive a duly executed copy of this agreement for its official records.

IN WITNESS WHEREOF, the undersigned have caused this storm water facility maintenance Agreement to be duly executed the day and year first written above.

By: _____ (signature)

Print or Type name: _____

Street: _____

City, State: _____

COUNTY OF SEDGWICK)
)
STATE OF KANSAS)

BE IT REMEMBERED, that on this _____ day of _____, 20____, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came _____, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same, for and behalf of the corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Notary:_____

(My Commission Expires:_____)

----- End of Document -----